P.S. Honda a/k/a P.S. Motors Inc. *and* Local 239, General Automotive Electronics & Specialty Products Drivers, Helpers and Warehousemen affiliated with International Brotherhood of Teamsters, AFL–CIO. Cases 29–CA–18585 and 29–CA–21402

April 27, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND LIEBMAN

Upon charges filed by the Union on October 5, 1994, and September 16, 1997, the General Counsel of the National Labor Relations Board issued a consolidated complaint (complaint) on January 26, 1998, against P.S. Honda a/k/a P.S. Motors Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act and on February 17, 1998, issued an order amending the complaint. Although properly served copies of the charges, complaint, and order amending the complaint, the Respondent failed to file an answer.

On March 30, 1998, the General Counsel filed a Motion for Summary Judgment with the Board. On March 31, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated February 23, 1998, notified the Respondent that unless an answer were received by March 2, 1998, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a New York corporation with its principal office and place of business located at 1260 Northern Boulevard, Manhasset, New York, has been engaged in the retail sale and service and maintenance of automobiles. During the 12-month period preceding issuance of the complaint, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of $500,000 and purchased and received at its Manhasset facility automobiles and other products, goods, and materials valued in excess of $5000 directly from points outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All service and parts department employees including maintenance men, employed by the Respondent, excluding one manager and one assistant manager, executives, clericals, guards and supervisors as defined in Section 2(11) of the Act.

Since about December 1, 1986, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the Respondent's unit employees, and since that date, has been recognized as such representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms for the period from November 30, 1989, to November 30, 1992 (the 1989–1992 agreement). At all times since December 1, 1986, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the unit employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment of said employees.

At various material times, during the months of November 1992 through June 1993, the Respondent and the Union met for the purposes of engaging in negotiations with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment regarding the unit employees, to be embodied in a successor agreement to the 1989–1992 agreement.

Since about a date in mid-May 1994 until about November 26, 1996, the Respondent failed and refused to

meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees.[1] About November 26 and December 18, 1996, and January 20, March 21, and June 17, 1997, the Respondent and the Union met for the purposes of engaging in further negotiations with respect to wages, hours, and other terms and conditions of employment of the unit employees.

About March 21, 1997, the Respondent reneged on a previous agreement, reached with the Union on December 18, 1996, to make the unit employees' trial period 90 days, by changing its position to request a 120-day trial period. About June 17, 1997, the Respondent reneged on a previous agreement reached with the Union to have a clause in the contract asserting that it would notify the Union of new hires. Since about December 18, 1997, the Respondent refused to agree to a dues-checkoff provision in the collective-bargaining agreement, while agreeing to provide the Union with the names of new hires and to deduct dues, on the condition that the Union act in a manner which it deemed ''nice'' in its dealing with the Respondent, which would allow the Respondent to cease doing so at its discretion. Since a date between June 4 and July 28, 1997, the Respondent implemented a unilateral wage increase with respect to the unit employees, without bargaining with the Union. The Respondent engaged in this conduct without the Union's consent, and these terms and conditions of employment are mandatory subjects of bargaining for the purpose of collective bargaining.

About July 28, 1997, the Respondent informed the Union that it intended unilaterally to implement other such wage increases without bargaining with the Union.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed and refused to meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees, has reneged on a previous agreement, reached with the Union on December 18, 1996, to make the unit employees' trial period 90 days, by changing its position to request a 120-day trial period, has reneged on a previous agreement reached with the Union to have a clause in the contract asserting that it would notify the Union of new hires, and agreed to provide the Union with the names of new hires and to deduct dues only on conditions that would allow the Respondent to cease notifying the Union and deducting dues at its discretion, we shall order the Respondent to honor its agreements with the Union with respect to the 90-day trial period and notification of new hires, and to meet and bargain with the Union in good faith, and, if an understanding is reached, to embody the understanding in a signed agreement. Furthermore, having found that since a date between June 4 and July 28, 1997, the Respondent implemented a unilateral wage increase with respect to the unit employees, without bargaining with the Union and informed the Union that it intended unilaterally to implement other such wage increases without bargaining with the Union, we shall order the Respondent to rescind, on request of the Union, any unlawful unilateral changes. However, nothing in the Order shall be construed as requiring the rescission of any benefits granted to unit employees.

ORDER

The National Labor Relations Board orders that the Respondent, P.S. Honda a/k/a P.S. Honda Motors Inc., Manhasset, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees.

(b) Reneging on previous agreements reached with the Union.

(c) Conditioning on its own discretion its agreement to provide the Union with the names of new hires and to deduct dues.

(d) Implementing or stating that it intends to implement a unilateral wage increase for the unit employees without bargaining with the Union.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor its agreements with the Union with respect to the 90-day trial period and notification of new hires. The unit includes the following employees:

[1] On November 18, 1994, the General Counsel issued a complaint and notice of hearing in Case 29–CA–18585 alleging, inter alia, that the Respondent had refused to bargain with the Union. On March 21, 1995, the hearing in the matter was postponed indefinitely to allow the parties to resolve the matter and the other outstanding issues between them through the bargaining process.

All service and parts department employees including maintenance men, employed by the Respondent, excluding one manager and one assistant manager, executives, clericals, guards and supervisors as defined in Section 2(11) of the Act.

(b) Meet and bargain with the Union in good faith and, if an understanding is reached, embody the understanding in a signed agreement.

(c) On request of the Union, rescind any unlawful unilateral changes, provided, however, that nothing in this Order shall be construed as requiring the rescission of any benefits granted to unit employees.

(d) Within 14 days after service by the Region, post at its facility in Manhasset, New York, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 15, 1994.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 27, 1998

William B. Gould IV,	Chairman
Sarah M. Fox,	Member
Wilma B. Liebman,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to meet and bargain with Local 239, General Automotive Electronics & Specialty Products Drivers, Helpers and Warehousemen affiliated with the International Brotherhood of Teamsters, AFL–CIO as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT renege on previous agreements reached with the Union.

WE WILL NOT condition on our own discretion our agreement to provide the Union with the names of new hires and to deduct dues.

WE WILL NOT implement or state that we intend to implement a unilateral wage increase for the unit employees without bargaining with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor our agreements with the Union with respect to the 90-day trial period and notification of new hires. The unit includes the following employees:

All service and parts department employees including maintenance men, employed by us, excluding one manager and one assistant manager, executives, clericals, guards and supervisors as defined in Section 2(11) of the Act.

WE WILL meet and bargain with the Union in good faith and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL, on request of the Union, rescind any unlawful unilateral changes, provided, however, that this shall not be construed as requiring the rescission of any benefits granted to unit employees.

P.S. HONDA A/K/A P.S. MOTORS INC.